

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

SARAH KNAPP,	)	
	)	
Plaintiff,	)	Civ. No. 07-269-TC
	)	
vs.	)	
	)	
	)	FINDINGS AND RECOMMENDATION
	)	
COMMISSIONER of Social Security,	)	
Defendant.	)	

Coffin, Magistrate Judge:

Plaintiff, Sarah Knapp, seeks review of a final decision of the Commissioner denying her application for Social Security disability and Social Security Income (SSI) disability benefits under 42 U.S.C. §§ 1381a and 1382c(a)(3)(A). Before the court is plaintiff's Complaint to Review Final Decision of Commissioner (#1). For the reasons that follow, I recommend that the decision of the Commissioner be reversed and the matter remanded for further proceedings.

Background

Plaintiff applied for disability and SSI benefits, citing a

1 number of mental and physical complaints. After an ALJ  
2 determined that plaintiff was not disabled, she requested review  
3 by the Appeals Council and submitted new evidence, a  
4 neuropsychological report by Dr. Rory Richardson, in support of  
5 her request. Tr. 15-30; 11-14; 570-77. The Appeals Council  
6 denied review, rendering the ALJ's decision the final decision of  
7 the agency. Tr. 6-10.

8 Plaintiff, a 59-year-old woman with a high school education,  
9 alleged that her disability onset occurred on June 1, 2000. Tr.  
10 588, 90, 29. The medical evidence includes evaluations by Robert  
11 Tilley, M.D. (11/19/04, 503-13), Teresa Dobles, Psy.D. (9/26/02,  
12 Tr. 241-53), Joseph Balsamo, Psy.D. (2/26/04, Tr. 552-57), and  
13 Rory Richardson, Ph.D. (3/06, Tr. 570-77). Plaintiff also  
14 testified concerning her limitations. The ALJ discounted  
15 portions of the medical evidence based in part on credibility  
16 determinations concerning plaintiff's physical and mental  
17 capabilities and ultimately determined that she is not disabled.  
18 Upon submitting additional evidence to the Appeals Council,  
19 plaintiff's claim was denied on the basis that the  
20 neuropsychological report was not inconsistent with the residual  
21 functional capacity found by the ALJ. Tr. 7.

22 Plaintiff disputes the ALJ's findings at steps two through  
23 five of the five-step sequential evaluation process used to  
24 determine whether a claimant is disabled. See 20 C.F.R. §§  
25 404.1520, 416.920. Because my recommendation to reverse and  
26 remand for further proceedings rests on the conclusion that the  
27 ALJ erred in its determination concerning plaintiff's severe  
28 impairments at step two and in its determination concerning

1 whether plaintiff's impairments meet or equal a listed impairment  
2 under three, my analysis focuses on those errors.

3 In plaintiff's view, the ALJ erred in failing to consider a  
4 number of items of medical evidence: plaintiff's bilateral hand  
5 limitations, her generalized anxiety disorder, her dementia  
6 secondary to trauma, bipolar disorder, and limitations assessed  
7 by Dr. Tilley.<sup>1</sup> Plaintiff further argues that the ALJ erred in  
8 failing to adequately engage the question whether her combined  
9 impairments are medically equal to any listed impairment. See 20  
10 C.F.R. § 404.1526(a). I agree with plaintiff's assertions of  
11 error, and based on the following analysis, recommend reversal  
12 and remand.

#### 13 Medical Evidence

15 Dr. Dobles conducted a psychological and neurological  
16 examination in September, 2002. Dobles recorded plaintiff's  
17 self-reported childhood introduction to alcohol and drugs and  
18 later abusive relationships influenced by her substance abuse.  
19 Tr. 242. After unsuccessful treatments for alcoholism, plaintiff  
20 developed pancreatitis secondary to alcoholism in 1989 and  
21 thereafter achieved sustained remission from alcoholism. Tr.  
22 242.

23 Dr. Dobles recorded plaintiff's responses to a number of  
24 psychological tests: Wechsler Adult Intelligence Scale-III,

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25  
26 <sup>1</sup> Plaintiff further asserts that the ALJ failed to include all of  
27 plaintiff's limitations in the step five inquiry. Because reversal is  
28 recommended based on error at steps two and three, and upon remand,  
the ALJ's determination at those steps would affect determinations at  
the subsequent steps, my analysis is focused in large part on the  
step-two and step-three error.

1 subtests from the Wechsler Memory Scales-Third Edition, Auditory  
2 Continuous Performance Test, Mesulam-Weintraub Cancellations  
3 Test, Trails A & B, Wisconsin Card Sorting Test, California  
4 Verbal Learning Test (Second Edition) Adult Version, Rey-  
5 Osterreith Complex Figure Drawing, Boston Naming Test, Hooper  
6 Visual Organization Test, Word Generation Test, Finger Tapping  
7 Test, 21 Item Test, Personality Assessment Inventory, Beck  
8 Depression Inventory, and Problem Behavior Inventory. Tr. 243.

9 Dobles noted significant elevations across several scales of  
10 personality functioning and explained,

11 Profiles of this sort are usually associated with  
12 marked distress and severe impairment in functioning.  
13 The configuration of clinical scales suggests a person  
14 with significant thinking and concentration problems  
15 accompanied by prominent agitation and distress. It is  
likely that [plaintiff] has few, if any, close  
relationships as she feels anxious and threatened in  
such relationships. She has poor social judgment and  
difficulty making decisions.

16 Tr. 246.

17 Dobles diagnosed plaintiff with a number of disorders:  
18 alcohol dependence in sustained full remission; other substance  
19 abuse in sustained full remission; panic disorder without  
20 agoraphobia; post-traumatic stress disorder; depressive disorder  
21 NOS; and, personality disorder NOS with features of borderline,  
22 antisocial, and dependent personalities. Tr. 248. She noted  
23 that plaintiff "displayed emotional deregulations during the test  
24 session" and despite an intact ability to perform activities of  
25 daily living and take on volunteer activities, "it is likely that  
26 the severity of her psychological symptoms would preclude her  
27 ability to maintain employment at this time." Tr. 247. Dobles  
28 also concluded that plaintiff's motor speed was severely impaired

1 in both hands. Tr. 251.

2 On Dobles's "Rating of Impairment Severity Report," she  
3 opined that plaintiff had marked limitations in social  
4 functioning and frequent deficits in concentration, persistence,  
5 and pace, that drug or alcohol abuse did not significantly  
6 contribute to her impairments, that the condition will last at  
7 least 12 months, and that her prognosis was poor. Tr. 252-53.  
8 In a later revised form, Dobles opined that plaintiff has  
9 moderate limitations in concentration, persistence, or pace, and  
10 marked limitations in social functioning. Tr. 254-55.

11 Dr. Basalmo examined plaintiff in February 2004. Tr. 552-  
12 57. He diagnosed Generalized Anxiety Disorder and Alcohol  
13 Dependence in full remission and recommended "that consideration  
14 for disability benefits be assessed primarily on possible  
15 physical dysfunction and secondarily on psychological factors."  
16 Tr. 556-57.

17 Dr. Richardson examined plaintiff in February and March  
18 2006. He noted "significant impairment in most of the Memory  
19 Scales," suggesting "substantial impairment in memory functions,  
20 specifically associated with Visual Processing." Tr. 573-75.  
21 Plaintiff showed "definite indications of dyscalculia" on the  
22 Reitan Indiana Aphasia Screening test and a "valid profile of  
23 substantial psychopathology" on the MMPI-II. She demonstrated  
24 "extremely elevated" post-traumatic stress scales at "T-Scores of  
25 86 and 88 respectively" and "substantial elements suggesting that  
26 the level of intrusive psychiatric symptoms are severe enough to  
27 impact both work and family interactions." Tr. 575. According  
28 to The Millon Clinical Multiaxial Inventory-III, plaintiff

1 suffered from a "significant Anxiety Disorder with posttraumatic  
 2 stress, chemical dependency and strong support for a Bipolar  
 3 condition with elements of Thought Disorder significantly  
 4 present." Richardson further reported, "Borderline personality  
 5 symptoms are significantly supported with schizoid, avoidant,  
 6 depressive, dependent and antisocial components. Self-defeating  
 7 patterns are also indicated." Tr. 575.

8 Richardson summarized,

9 Based on this evaluation, there does appear to  
 10 be indications that [plaintiff] does suffer from a  
 11 dementia condition specifically impairing Visual  
 12 Memory, which is most likely secondary to head  
 13 trauma. There appears to be significant issues that  
 14 would also support the concomitant presence of cyclic  
 15 mood disturbance, consistent with Bipolar Disorder,  
 16 obsessive-compulsive symptomatology with multiple  
 17 features which further complicate extremely severe  
 18 multi-trauma Post Traumatic Stress Disorder. The  
 19 level of chemical dependence is severe; however, she  
 20 appears to be in remission at this time. Her level  
 21 of recovery appears stable. She does not appear to  
 22 have substantial difficulty with maintaining her  
 23 recovery, as long as she maintains active involvement  
 24 with a 12-Step Program and her recovery activities.  
 25 The severity of post traumatic stress is such that  
 26 based on the examination and interview, dissociative  
 27 components are extremely likely and would interfere  
 28 with ability to function in situations where  
 flashbacks may be triggered. Her emotional  
 presentation is that of an individual that is  
 extremely fragile. The cyclic mood patterns could be  
 one of the reasons why she has been unable to  
 effectively control the symptomatology. The level of  
 flashbacks and nightmares are significant enough that  
 treatment using an anti-psychotic medication to  
 reduce flashbacks and nightmares would be  
 appropriate. Consideration of medication that would  
 help with reducing mood swings and treating a Bipolar  
 condition would be appropriate. Because of the  
 disclosures of the relatively recent practice of  
 bulimia, the diagnosis of the Bulimia Nervosa appears  
 to be appropriate. . . .

#### 27 DIAGNOSIS

28 DSM-IV-TR Axis I:294.1 Dementia, Secondary to  
 Trauma, Specifically

		Impacting Visual Memory and Short Term Memory, and Working Memory.
314.9		Attention-Deficit Hyperactivity Disorder, NOS.
309.81		Post Traumatic Stress Disorder.
296.80		Bipolar Disorder, NOS.
301.21		Panic Disorder With Elements of Mild Agoraphobia.
303.90		Alcohol Dependency in Remission.
304.80		Polysubstance Dependence in Remission.
307.51		Bulimia Nervosa, Currently Active.
307.47		Dyssomnia, NOS, Possibly Secondary to Other Differentials.
Axis II:301.83		Borderline Personality Disorder.

Tr. 575-76.

Plaintiff also underwent a physical examination by Dr. Robert Tilley in November 2004. Tr. 503-13. Concerning plaintiff's physical capacities, he opined that plaintiff could perform fine manipulation frequently and could ambulate or stand for an hour at a time, up to four hours of ambulation and six hours of standing during an eight-hour day. Tr. 508-09. He further opined that she occasionally balance, occasionally lift or carry less than ten pounds, but could never climb, kneel, push, pull, or crawl. Tr. 509.

#### Discussion

As noted above, plaintiff disputes the ALJ's finding at step two of the five-step sequential evaluation process. There, the ALJ found that plaintiff has the following "severe" impairments:

1           3.    The claimant has severe impairments including  
2           degenerative disc disease; a depressive  
3           disorder; post traumatic stress disorder; a  
4           personality disorder, not otherwise specified;  
5           and a substance addiction disorder, in  
6           sustained remission.

7           Tr. 29.

8           In plaintiff's view, the ALJ improperly rejected a number of  
9           pieces of medical evidence, and that error infected the ALJ's  
10          analyses at steps two through five. The court agrees. The ALJ  
11          disregarded Dr. Dobles's opinion that plaintiff suffered severe  
12          impairment of motor speed in both hands, consistent with other  
13          medical evidence in the record establishing that plaintiff has  
14          carpal tunnel syndrome on the right and left sides. Tr. 338-40,  
15          367, 398. The ALJ also omitted from consideration Dr. Dobles's  
16          opinion that plaintiff has panic disorder without agoraphobia, Dr.  
17          Basalmo's opinion that plaintiff has a generalized anxiety  
18          disorder, and Dr. Richardson's opinion that plaintiff has dementia  
19          secondary to trauma, specifically impacting visual memory, short  
20          term memory, and working memory, and bipolar disorder NOS. Tr.  
21          248, 556. The record does not reveal reasons for the ALJ's  
22          rejection of these doctors' opinions, as required under Lester v.  
23          Chater, 81 F.3d 821 (9th Cir. 1995).

24          In addition, a review of the record indicates that the ALJ  
25          failed to provide reasons for rejecting evidence from Dr. Tilley  
26          concerning plaintiff's limitations with respect to fine  
27          manipulation, lifting and carrying, and ambulating. For example,  
28          contrary to the ALJ's RFC finding, which stated that plaintiff  
29          could stand and walk up to a total of six hours in a work day, Dr.  
30          Tilley concluded that plaintiff could stand for an hour at a time



1 up to four hours.<sup>2</sup> Tr. 29. Further, the ALJ did not restrict  
2 plaintiff to being able to perform frequent (as opposed to  
3 constant) fine manipulation, in contrast to Dr. Tilley's  
4 conclusion.<sup>3</sup>

5 Finally, the ALJ failed to include any discussion of whether  
6 impairments otherwise omitted from consideration combined with  
7 determined impairments equal a listed impairment. The ALJ's  
8 cursory conclusion that "claimant's impairments, severe and non  
9 severe, considered singly and in combination, are not attended by  
10 medical findings which meet or equal" a listed impairment," Tr.  
11 20, does not itemize impairments that would permit this court's  
12 review in the question whether that conclusion is supported by  
13 substantial evidence or a correct application of relevant law.  
14 See Marcia v. Sullivan, 900 F.2d 172, 176 (9th Cir. 1990) ("in  
15 determining whether a claimant equals a listing under step three  
16 of the Secretary's disability evaluation process, the ALJ must  
17 explain adequately his evaluation of alternative tests and the  
18 combined effects of the impairments").

19  
20 <sup>2</sup>The ALJ summarized evidence indicating that plaintiff  
21 exaggerated certain symptoms, and noted that Dr. Tilley reported that  
22 plaintiffs' difficulty with ambulation appeared "somewhat put on."  
23 However, the record is unclear on the question whether the ALJ  
24 rejected Dr. Tilley's ultimate findings concerning her ability to  
25 ambulate on that basis, and specifically why the ALJ's findings  
26 concerning ambulation differed from those of Dr. Tilley. Even while  
27 explaining that Dr. Tilley's assessment was "not supportive" of  
28 plaintiff, he noted "the opinion of Dr. Tilley has been substantially  
relied upon in the assessment of the claimant's physical residual  
functional capacity as set forth above." Tr. 25, 27.

26 <sup>3</sup>The Commissioner argues that a "basic reading" of the ALJ's RFC  
27 finding accommodates the apparently rejected evidence. Def. Br. 13. I  
28 do not see how the ALJ's determinations concerning lifting and  
reaching limitations, work restrictions, and limitations concerning  
interactions with the public address the neglected medical evidence.

1 As plaintiff explains, the omitted diagnoses require the  
2 ALJ's further consideration in determining the extent and nature  
3 of plaintiff's impairments, and whether plaintiff is disabled.  
4 For that reason, I recommend that the decision of the Commissioner  
5 be reversed and the matter remanded for further proceedings.  
6

7 Conclusion

8 For the foregoing reasons, I recommend that the decision of  
9 the Commissioner be reversed and the case remanded for further  
10 proceedings.  
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12 Dated this 16 day of February, 2008.  
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16 THOMAS COFFIN  
17 United States Magistrate Judge  
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